



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SA.No.402 of 2012

1. Muthu
2. Angamuthu

..Defendants/Appellants/
Appellants

Vs.

1. Nataraj

..Plaintiff/Respondent
/Respondent

2. Azhagar

..1st Defendant/
Respondent/Respondent

Prayer:Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Perambalur, dated 24.06.2011 made in A.S.No.3 of 2011 confirming that of the District Munsif, Perambalur, dated 29.03.2010 made in O.S.No.220 of 2000.

For Appellants : Mr.I.Abrar Mohamed Abdullah

For Respondents: Mr.M.Palani Muthu
for R1
R2- Served
No appearance.

JUDGMENT

The defendants are the Appellants. The respondent/Plaintiff filed a suit for permanent injunction with respect to the property situated at Old Survey No.746/4A (New Survey No.200/4A) measuring an extent of 1 acre 27 cents.

2.The specific case of the plaintiff is that the subject property is a Government Poramboke land. The father of the plaintiff had purchased certain properties in Survey Nos.746/1, 746/2, 746/3 and 746/5 through a registered sale deed dated 17.11.1982 marked as Ex.A1 and the subject property was contiguous to these properties and it was in possession and enjoyment of the father of the plaintiff.



3.The further case of the plaintiff is that after the demise of his father, his legal heirs viz., Periasamy, Palani Muthu, Chella Muthu, Arumugam and Natarajan were jointly in possession and enjoyment of the same. It is stated that they had originally divided it among themselves and the subject property namely old Survey No.746/4A was allotted in favour of the plaintiff and he is in possession and enjoyment of the same.

4.It is further stated by the plaintiff that the revenue records originally stood in the name of the father of the plaintiff and in order to substantiate the same, Ex.A4 to Ex.A8 were marked and after his demise, the revenue records were transferred in the name of the plaintiff and his brothers, which is sought to be substantiated through Ex.A9.

5.The grievance of the plaintiff is that the defendants who have no right over the said property were attempting to interfere with the possession and enjoyment of the plaintiff. Left with no other option, the present second appeal was filed.

6.The specific case of the defendants is that the subject property is not a Government Poramboke land and it was never in possession and enjoyment of the father of the plaintiff. According to the defendants, the subject property was originally owned by one Angamuthu, who is the grand father of the defendants 2 and 3. After his demise, his sons, viz ., Chinnamuthu, Arunachalam and Kuzhandhai had divided it among themselves with 1/3rd share each roughly measuring 60 cents to each of the sharers. Arunachalam to whom 60 cents was allotted, sold his share along with his sons through a registered sale deed dated 07.12.1984 in favour of the father of the 2nd defendant viz Kuzhandhai. After the demise of Kuzhandhai, his share of 60 cents and the 60 cents that was purchased by him was in possession and enjoyment of the 2nd defendant. Insofar as the balance 60 cents, it is in possession and enjoyment of the 3rd defendant and his brother Murugan.

7.In view of the above, the defendants claim that they are the absolute owners of the property and are in possession and enjoyment of the same and hence, they have denied the right and possession of the plaintiff and had sought for the dismissal of the suit.

8.Heard the learned counsel for the Appellants and the learned counsel appearing for the respondents.

9.Both the Courts below have given a categoric finding to the effect that the subject property is a Government Poramboke land. Both the Courts below on appreciation of the relevant revenue records, came to the conclusion that the subject



property is in possession and enjoyment of the plaintiff.

10. The learned counsel for Appellants submitted that both the Courts below erred in deciding the possession of the property by relying upon revenue records. It was further submitted that the lands in Survey No. 746/4A is in the name of the defendants and their ancestors even prior to the UDR Scheme. During the UDR Scheme, the revenue records were absolutely transferred in the name of the plaintiff and that cannot be taken advantage by the plaintiff to prove their possession. The judgements of both the Courts below requires the interference of this Court.

11. The Second Appeal is in the stage of notice of motion and hence, this Court has to necessarily see if any substantial question of law is involved even before taking up the Second Appeal for hearing after admitting the same, by formulating the substantial questions of law.

12. It is now settled that a perverse finding which is not based on or which contrary to the oral and documentary evidence, can also be framed as a substantial question of law. However, this Court must keep in mind that if there is some evidence and there is scope for a different interpretation of the same, that will not be a ground to interfere with the findings of the Courts below.

13. In the present case, the evidence available on record shows that the property in question is a Government Poramboke. Both the sides did not care to examine any one from the side of the revenue. The only option that was available to the Courts below is to render their finding based on the revenue records.

14. Insofar as the Government poramboke land is concerned, the person who is able to establish a settled position in the property can lay a suit for permanent injunction as against the private party and thereby, protect his possession. This can be done even without impleading the Government as party. Useful reference can be made to the judgement of this Court in [Ezumalai and others Vs. Venkatesa Gounder] reported in 2018 5 law weekly 785.

15. On a careful reading of the judgements of the Courts below, it can be seen that both the Courts below have taken into consideration the fact that the revenue records stood in the name of the father of the plaintiff and thereafter, it continued in the name of the plaintiff. Even though the defendants have taken a stand that this happened due to the mistake that took place during the UDR scheme, the defendants have not taken any steps to rectify the same. Hence, the Courts below on



appreciation of evidence, have concurrently found that the plaintiff is in possession and enjoyment of the property.

16.This Court does not find any ground to interfere with those findings and this Court does not find any perversity in the findings rendered by both the Courts below. As between the documents that were produced by either side, the Courts below found that the documents produced by the plaintiff is more relevant for the purpose of determining the possession over the property. Even if this Court is to come to a different conclusion based on re-appreciation of evidence, that can never be a ground to interfere in the second appeal.

17.This Court does not find any substantial questions of law involved in the present Second Appeal and accordingly, the second appeal stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rka

To

1. The Subordinate Judge,
Perambalur.
2. The District Munsif Court,
Perambalur.

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1cc to M/s.I.Abrar Mohamed Abdullah, Advocate, S.R.No.7897

SA.No.402 of 2012

JP-II(CO)
RGA(07/03/2022)